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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/070,302	05/01/2002	Daniel R. Dietrich	MBP-010XX	2837
207	7590	01/26/2005	EXAMINER	
WEINGARTEN, SCHURGIN, GAGNEBIN & LEOVICI LLP TEN POST OFFICE SQUARE BOSTON, MA 02109			CEPERLEY, MARY	
			ART UNIT	PAPER NUMBER

1641

DATE MAILED: 01/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Advisory Action</b>	<b>Application No.</b> 10/070,302	<b>Applicant(s)</b> DIETRICH ET AL.	
	<b>Examiner</b> Mary (Molly) E. Ceperley	<b>Art Unit</b> 1641	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☒ The period for reply expires 6 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☒ A Notice of Appeal was filed on 28 December 2004. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b) ☐ they raise the issue of new matter (see Note below);
  - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_.

3. ☒ Applicant's reply has overcome the following rejection(s): claim 3 under 35 USC 102/103.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: see the attached letter.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: 1,3-5,7-12 and 14-18.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

8. ☐ The drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☐ Other: \_\_\_\_\_

Mary (Molly) E. Ceperley  
Primary Examiner  
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**A)** The claims remain rejected under 35 USC 112, second paragraph, for the reason set forth in paragraph **3)a)** of the final rejection. The claims still include antibodies prepared from compounds wherein "R<sup>1</sup> and R<sup>2</sup> are connected to each other to form a cyclic moiety". Applicants have not addressed the question of *i)* the type of "cyclic moiety" meant to be included and *ii)* the question of whether or not the "cyclic moiety" includes the microcystin structure of the prior art.

**B)** The claims remain rejected under 35 USC 112, first paragraph, for the reason stated in paragraph **5)** of the final rejection. Applicants have not addressed the rejection as set forth in paragraph **7)** of the first Office action of September 03, 2003.

**C)** Claims 1, 4, 5, 7-12 and 14-18 remain rejected under 35 USC 102(b)/103 for the reasons set forth in paragraphs **6)** – **8)** of the final rejection. These claims remain rejected for the reason that they are directed to haptens which contain both the ADDA moiety and the cyclic moiety of the microcystin haptens of the prior art (see instant claim 1 wherein "R<sup>1</sup> and R<sup>2</sup> are connected to each other to form a cyclic moiety").

**D)** Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mary (Molly) E. Ceperley whose telephone number is (571) 272-0813. The examiner can normally be reached from 8 a.m. to 4:30 p.m.

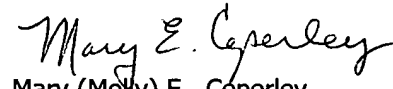
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Long V. Le, can be reached on (571) 272-0823. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should

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you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

January 21, 2005

  
Mary (Molly) E. Ceperley  
Primary Examiner  
Art Unit 1641